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No. 98-1803

In the Supreme Court of the United States

RONNIE L. GIBSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

SETH P. WAXMAN
Solicitor General
Counsel of Record
JAMES K. ROBINSON
Assistant Attorney General
DEMETRA LAMBROS
Attorney
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

2nd

QUESTION PRESENTED

Whether the court of appeals correctly enforced petitioner's knowing and voluntary waiver in his plea agreement of the right to appeal his sentence.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	1
Argument	7
Conclusion	17

TABLE OF AUTHORITIES

Cases:

Blackledge v. *Allison*, 431 U.S. 63 (1977)	16
Brady v. *United States*, 397 U.S. 742 (1970)	9
Everard v. *United States*, 102 F.3d 763 (6th Cir. 1996), cert. denied, 519 U.S. 1139 (1997)	15
Jones v. *United States*, 167 F.3d 1142 (7th Cir. 1999)	7
Newton v. Rumery, 480 U.S. 386 (1987)	9, 15-16
Peguero v. *United States*, 119 S. Ct. 961 (1999)	12
Tollett v. *Henderson*, 411 U.S. 258 (1973)	7, 16
United States v. *Aguilar-Muniz*, 156 F.3d 974 (9th Cir. 1998)	13
United States v. *Ashe*, 47 F.3d 770 (6th Cir.), cert. denied, 516 U.S. 859 (1995)	7
United States v. *Attar*, 38 F.3d 727 (4th Cir. 1994), cert. denied, 514 U.S. 1107 (1995)	11
United States v. *Atterberry*, 144 F.3d 1299 (10th Cir. 1998)	7, 11
United States v. *Baty*, 980 F.2d 977 (5th Cir. 1992), cert. denied, 508 U.S. 956 (1993)	9, 13, 14
United States v. *Benitez-Zapata*, 131 F.3d 1444 (11th Cir. 1997)	11, 14
United States v. *Broce*, 488 U.S. 563 (1989)	9
United States v. *Buchanan*, 59 F.3d 914 (9th Cir.), cert. denied, 516 U.S. 970 (1995)	12

Cases—Continued: Page

United States v. *Bushert*, 997 F.2d 1343 (11th Cir. 1993), cert. denied, 513 U.S. 1051 (1994) 14
United States v. *Chemical Foundation, Inc.*, 272 U.S. 1 (1926) 16
United States v. *DeSantiago-Martinez*, 38 F.3d 394 (9th Cir. 1992), cert. denied, 513 U.S. 1128 (1995) 7
United States v. *Goodman*, 165 F.3d 169 (2d Cir. 1999) 14
United States v. *Hicks*, 129 F.3d 376 (7th Cir. 1997) 11
United States v. *Marin*, 961 F.2d 493 (4th Cir. 1992) 7
United States v. *Martinez*, 143 F.2d 1266 (9th Cir.), cert. denied, 119 S. Ct. 254 (1998) 13
United States v. *Martinez-Rios*, 143 F.3d 662 (2d Cir. 1998) 14-15
United States v. *Melancon*, 972 F.2d 566 (5th Cir. 1992) 7, 14
United States v. *Mezzanotto*, 513 U.S. 196 (1995) 7, 15, 16
United States v. *Michelsen*, 141 F.3d 867 (8th Cir.), cert. denied, 119 S. Ct. 363 (1998) 7, 16
United States v. *Navarro-Botello*, 912 F.3d 318 (9th Cir. 1990), cert. denied, 503 U.S. 942 (1992) 8-9, 11, 17
United States v. *One Male Juvenile*, No. 96-4023, 1997 WL 381955 (4th Cir. July 11, 1997), cert. denied, 118 S. Ct. 1191 (1998) 6, 7
United States v. *Ready*, 82 F.3d 551 (2d Cir. 1996) 11
United States v. *Rosa*, 123 F.3d 94 (2d Cir. 1997) 16
United States v. *Rutan*, 956 F.2d 827 (8th Cir. 1992) 8, 9

Cases—Continued: Page

United States v. *Salcido-Contreras*, 990 F.2d 51 (2d Cir.), cert. denied, 509 U.S. 931 (1993) 7, 8
United States v. *Schmidt*, 47 F.3d 188 (7th Cir. 1995) 11
United States v. *Schuman*, 127 F.3d 815 (9th Cir. 1997) 13
United States v. *Wenger*, 58 F.3d 280 (7th Cir. 1995) 16-17
United States v. *Wiggins*, 905 F.2d 51 (4th Cir. 1990) 9, 17
United States v. *Zink*, 107 F.3d 716 (9th Cir. 1997) 13

Statutes, regulations and rules:

18 U.S.C. 513(a) 2
18 U.S.C. 3742 3
42 U.S.C. 1983 (1994 & Supp. III 1997) 9
Sentencing Guidelines:
§ 2F1.1(a) 4
§ 2F1.1(b)(1)(G) 4
§ 2F1.1(b)(2)(A) 4
§ 2F1.1(b)(2)(B) 4
§ 3B1.1(a) 4
§ 3E1.1 ..... 2, 4
§ 4A1.3 4
Fed. R. Crim. P.:
Rule 11 ..... 13, 14, 15
Rule 11(e)(6) 16
Rule 32 ..... 12, 15
Fed. R. Evid. 410 16

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is unpublished, but the decision is noted at 166 F.3d 1210 (Table).

JURISDICTION

The judgment of the court of appeals was entered on January 11, 1999. A petition for rehearing was denied on February 8, 1999 (Pet. App. 8a). The petition for a writ of certiorari was filed on May 7, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner pleaded guilty in the District Court for the Eastern District of North Carolina to conspiracy to make, utter, and possess a forged security with the intent to deceive another person or organization, in

violation of 18 U.S.C. 513(a). He was sentenced to 51 months of imprisonment. The court of appeals dismissed petitioner's appeal because he had waived his right to appeal his sentence in his plea agreement. Pet. App. 1a.

1. While on probation for forgery and uttering, petitioner defrauded several victims of more than $114,000. Specifically, he stole and forged business checks and then cashed the checks using false identification cards. He produced the identification cards on an official driver's license camera stolen from the North Carolina Department of Motor Vehicles. Petitioner also opened fraudulent business checking accounts, passed bad checks drawn from the accounts, and enlisted others to cash fraudulent or stolen checks. Pet. App. 1a.

Petitioner was indicted on one count of conspiracy to make, utter, and possess a forged security with the intent to deceive another person or organization, in violation of 18 U.S.C. 513(a). He pleaded guilty to that charge. Pet. App. 2a. In exchange, the government agreed not to prosecute petitioner further in the Eastern District of North Carolina for conduct forming the basis of the indictment and not to share any information provided by petitioner with state or other federal prosecuting authorities except upon their assent to be bound by the terms of the plea agreement. *Id.* at 9a, 12a-13a. The government also agreed to a three-level reduction for acceptance of responsibility under Sentencing Guidelines § 3E1.1. Pet. App. 13a.

In the plea agreement, petitioner expressly waived his right to appeal his sentence, either on direct appeal or in a post-conviction proceeding. The agreement provides as follows:

> The Defendant agrees:
>
> * * * * *
>
> c. To waive knowingly and expressly the right to appeal whatever sentence is imposed on any ground, including any appeal pursuant to 18 U.S.C. § 3742, and further to waive any right to contest the conviction or the sentence in any post-conviction proceeding, including any proceeding under 28 U.S.C. § 2255, excepting the Defendant's right to appeal based upon grounds of ineffective assistance of counsel and prosecutorial misconduct not known to the Defendant at the time of the Defendant's guilty plea.

Pet. App. 9a-10a.

At the plea hearing, the district court reviewed the agreement with petitioner, including his waiver of appellate rights. Describing the agreement to petitioner, the district court stated:

> You waive all right to appeal whatever sentence is imposed, and you waive the right to contest the conviction or sentence in any post-conviction proceeding * * * except you reserve the right to assert such a proceeding based upon the grounds of ineffective assistance of counsel or prosecutorial misconduct not known to you at this time.

Pet. App. 15a; see also *id.* at 2a. The court also told petitioner that any agreement with the government about sentencing factors was not binding on the court. *Id.* at 17a. Petitioner acknowledged to the court that he understood the terms of his agreement. *Ibid.* Also at the hearing, the district court determined that petitioner had received a copy of the indictment, discussed it with his attorney, understood the consequences of

pleading guilty, and was satisfied with the performance of his attorney. *Id.* at 2a.

2. At sentencing, petitioner was assigned a base offense level of 12 because of the amount of money involved in his fraud. See Sentencing Guidelines § 2F1.1(a)-(b)(1)(G). The court added an additional two levels for more than minimal planning, see Sentencing Guidelines § 2F1.1(b)(2)(A)-(B), and four levels for petitioner's role as an organizer or leader of a conspiracy involving more than five participants, see Sentencing Guidelines § 3B1.1(a). For accepting responsibility for the offense, petitioner received a three-level reduction. See Sentencing Guidelines § 3E1.1. With an adjusted offense level of 15 and a criminal history category of V, petitioner's Guidelines range was 37 to 46 months of imprisonment. Pet. App. 2a.

The presentence report suggested, however, and the district court agreed, that petitioner's ten prior convictions (including larceny, multiple assaults, breaking and entering a motor vehicle, and forgery) were not adequately represented by a criminal history category of V. Pet. App. 3a, 21a-22a; Gov't C.A. Br. 6 (quoting presentence report). For that reason, the court departed upward to criminal history category VI, see Sentencing Guidelines § 4A1.3, giving petitioner a revised Guidelines range of 41 to 51 months of imprisonment. The court sentenced petitioner to 51 months of imprisonment. Pet. App. 22a.

At the conclusion of the sentencing hearing, the court made the following statement to petitioner:

> You can appeal your conviction, Mr. Gibson, if you believe that your guilty plea was somehow unlawful or involuntary, or if there is some other fundamental defect in the proceedings that was not

> waived by your guilty plea. You also have a statutory right to appeal your sentence under certain circumstances, particularly if you think the sentence is contrary to law.
>
> However, a defendant may waive those rights as part of a plea agreement, and you have entered into a plea agreement which waives some or all of your rights to appeal the sentence itself. Such waivers are generally enforceable, but if you believe the waiver is unenforceable, you can present that theory to the appellate court.

Pet. App. 23a-24a.

3. On appeal, petitioner argued that the district court erred in departing upward from criminal history category V to category VI. He claimed that the court's statement at the conclusion of sentencing regarding his appellate rights overrode his waiver of the right to appeal in his plea agreement. Specifically, petitioner argued that, when a district court's oral pronouncement at sentencing conflicts with the terms of a written plea agreement, the oral pronouncement controls. Pet. App. 3a.

In an unpublished per curiam opinion, the court of appeals dismissed the appeal, finding that petitioner's waiver of his right to appeal his sentence was knowing and intelligent and therefore enforceable. The court noted that, at the plea hearing, the district court specifically questioned petitioner about his decision to waive his right to appeal; petitioner stated that he understood the consequences of his agreement; he reaffirmed his decision to plead guilty; he was represented by counsel; and there was no evidence to sug-

gest that he was incapable of understanding the consequences of his decision. Pet. App. 4a.

The court rejected petitioner's argument that the waiver was nullified by the district court's subsequent statements during sentencing. The court emphasized that the district court did not inform petitioner that he could appeal as a matter of right. Rather, the district court simply informed petitioner that "he could appeal if his guilty plea was involuntary or if his sentence was contrary to law." Pet. App. 5a. The court of appeals noted that valid waivers do not preclude such arguments on appeal, and that the district court's statement concerning petitioner's appellate rights was thus a correct statement of the law. *Ibid.* The court also emphasized that the district court "explicitly informed [petitioner] that he had entered into a plea agreement that waived his right to appeal, and that such waivers are generally enforceable." *Ibid.*

The court of appeals further found that, even if the district court had erroneously told petitioner at the sentencing hearing that he had a right to appeal his sentence, such a statement would not have nullified the valid waiver contained in his plea agreement. The court stated that:

> Once a defendant has knowingly and intelligently waived his right to appeal and that waiver is confirmed during a Rule 11 hearing, the requirements for an effective waiver of appeal have been satisfied, and the waiver should be enforced.

Pet. App. 6a (quoting *United States* v. *One Male Juvenile*, No. 96- 4023, 1997 WL 381955, at **4 (4th Cir. July 11, 1997), cert. denied, 118 S. Ct. 1191 (1998)).

ARGUMENT

Petitioner renews his contention (Pet. 7-25) that the waiver-of-appellate-rights provision in his plea agreement is unenforceable, and he argues that the court of appeals' decision conflicts with the holding of other courts. Those arguments lack merit. This Court denied the petition for certiorari in *One Male Juvenile*, which raised similar claims, see 118 S. Ct. 1191 (1998), and the Court should also deny the petition here.

1. This Court has held repeatedly that a defendant may validly waive constitutional and statutory rights as part of the plea bargaining process. See *United States* v. *Mezzanatto*, 513 U.S. 196, 200-202 (1995) (explaining that "many of the most fundamental protections afforded by the Constitution" may be waived and that statutory rights are presumptively waivable); *Tollett* v. *Henderson*, 411 U.S. 258, 267 (1973). Applying that principle, the courts of appeals have consistently enforced voluntary and knowing waivers of the right to appeal a sentence. See, *e.g.*, *Jones* v. *United States*, 167 F.3d 1142, 1144 (7th Cir. 1999); *United States* v. *Atterberry*, 144 F.3d 1299, 1300-1301 (10th Cir. 1998); *United States* v. *Michelsen*, 141 F.3d 867, 871 (8th Cir.), cert. denied, 119 S. Ct. 363 (1998); *United States* v. *Ashe*, 47 F.3d 770, 776 (6th Cir.), cert. denied, 516 U.S. 859 (1995); *United States* v. *DeSantiago-Martinez*, 38 F.3d 394, 395 (9th Cir. 1992), cert. denied, 513 U.S. 1128 (1995); *United States* v. *Salcido-Contreras*, 990 F.2d 51, 53 (2d Cir.), cert. denied, 509 U.S. 931 (1993); *United States* v. *Melancon*, 972 F.2d 566, 567-568 (5th Cir. 1992); *United States* v. *Marin*, 961 F.2d 493, 496 (4th Cir. 1992).

The court of appeals correctly enforced petitioner's waiver of his right to appeal in this case. As the court

found, petitioner entered into a counseled plea agreement in which he knowingly and voluntarily waived his right to appeal his sentence except on grounds of ineffective assistance of counsel or prosecutorial misconduct. Pet. App. 4a-5a. Petitioner does not contend that he was coerced or misled into signing the plea agreement or that he was misinformed in any way about its provisions. Nor does he claim that his counsel was ineffective or that there was misconduct on the part of the prosecutor. "In no circumstances * * * may a defendant, who has secured the benefits of a plea agreement and knowingly and voluntarily waived the right to appeal a certain sentence, then appeal the merits of a sentence conforming to the agreement. Such a remedy would render the plea bargaining process and the resulting agreement meaningless." *Salcido-Contreras*, 990 F.2d at 53.

2. Petitioner argues that he may appeal his sentence because a waiver of the right to challenge errors in sentencing that have not yet occurred cannot be "knowing," and because the district court's statements during sentencing about his appellate rights invalidated the waiver in his plea agreement. He is incorrect.

a. Petitioner argues (Pet. 14-18) that his waiver of appellate rights was necessarily unknowing and involuntary because his actual sentence (and any possible errors in imposing that sentence) were unknown to him at the time that he executed the waiver. The courts of appeals have consistently rejected that claim. Although a defendant may not know the exact contours of his prospective sentence, he knows that he has a right to appeal the sentence and that he is relinquishing that right. That knowledge renders the waiver knowing and intelligent. See *United States* v. *Rutan*, 956 F.2d 827, 830 (8th Cir. 1992); *United States* v. *Navarro-Botello*,

912 F.2d 318, 320 (9th Cir. 1990), cert. denied, 503 U.S. 942 (1992); see also *United States* v. *Baty*, 980 F.2d 977, 979 (5th Cir. 1992) (when defendant waives the right to appeal, he gives up the right to "correct a district court's unknown and unannounced sentence"), cert. denied, 508 U.S. 956 (1993); *United States* v. *Wiggins*, 905 F.2d 51, 53-54 (4th Cir. 1990) (waiver was "a voluntary and intelligent act" because defendant understood that he was "waiving his right to appeal his sentence even though its exact length was as yet undetermined").

Contrary to petitioner's contention (Pet. 15-16), waivers of the right to appeal sentences that have not yet been imposed do not differ from other waivers where the precise outcome of the waiver is unknown. "An accused does not know that the government will be able to prove its case, how witnesses will testify, or that he will be able to competently represent himself, yet he may freely waive his rights to jury trial, to confront witnesses, and to counsel." *Rutan*, 956 F.2d at 830 n.2. See also *United States* v. *Broce*, 488 U.S. 563 (1989) (defendants who pleaded guilty waived double jeopardy claims later raised successfully by similarly situated defendants who went to trial); *Brady* v. *United States*, 397 U.S. 742, 757 (1970) ("A defendant is not entitled to withdraw his guilty plea because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action."); cf. *Newton* v. *Rumery*, 480 U.S. 386, 394 (1987) (defendant can waive right to file a suit under 42 U.S.C. 1983 (1994 & Supp. 1997) as part of plea bargain).

Petitioner understood the sentencing risks he assumed and the rights he waived when he agreed to

waive his appellate rights in the plea agreement. In his plea agreement, petitioner expressly acknowledged his understanding that his sentence had not yet been determined by the district court and that the court was not bound by any sentence recommendation or agreement. Pet. App. 11a. He acknowledged further that any estimate of a sentence from "any source" was a "prediction not a promise." *Ibid.* He was told, in open court, that he would be sentenced under the Guidelines; that the court was not bound by any sentencing recommendation or agreement with the government; that the government reserved the right to make a sentencing recommendation; and that, even if the statutory maximum were to be imposed, he would still be bound by his plea. *Id.* at 16a-17a. At the plea hearing, petitioner affirmed his understanding and acceptance of those terms. *Id.* at 17a. Thus, petitioner's waiver of his right to appeal his sentence was entirely knowing and voluntary.

b. Petitioner also errs in arguing (Pet. 8-13, 19-20) that the district court contradicted the terms of petitioner's waiver in its statements at sentencing. Far from telling petitioner that he could appeal his sentence, the court explicitly reminded him that he had waived "some or all" of his appellate rights. See Pet. App. 23a (explaining that "a defendant may waive [his statutory right to appeal a sentence] as part of a plea agreement, and you have entered into a plea agreement which waives some or all of your rights to appeal the sentence itself").

At the same time that the district court reminded petitioner that he had waived his appellate rights, it also correctly advised him that he could present an argument about the enforceability of his waiver on appeal. See Pet. App. 23a-24a ("Such waivers are gen-

erally enforceable, but if you believe the waiver is unenforceable, you can present that theory to the appellate court."). As the court of appeals found, *id.* at 5a, the district court "simply [made] a correct statement of the law." It is well established that an appellate waiver does not foreclose all review. See *United States* v. *Ready*, 82 F.3d 551, 555 (2d Cir. 1996). For example, appellate review is available if the plea agreement is involuntary, see, *e.g.*, *United States* v. *Schmidt*, 47 F.3d 188, 190 (7th Cir. 1995); if the sentence is imposed in excess of the statutory maximum penalty, see, *e.g.*, *United States* v. *Attar*, 38 F.3d 727, 732 (4th Cir. 1994), cert. denied, 514 U.S. 1107 (1995); if the sentencing court relies on a constitutionally impermissible factor, such as race, see, *e.g.*, *United States* v. *Hicks*, 129 F.3d 376, 377 (7th Cir. 1997); or if the sentence imposed is not in accordance with the negotiated agreement, see, *e.g.*, *Navarro-Botello*, 912 F.2d at 321. Thus, any implication by the district court at sentencing that petitioner could obtain appellate review in some circumstances was fully consistent with petitioner's waiver of his appellate rights in his plea agreement. See, *e.g.*, *Atterberry*, 144 F.3d at 1301 (sentencing court's statement that "[b]oth the Government and the defendant are advised of their respective rights to appeal this sentence" did not contradict defendant's waiver of appellate rights because waiver allowed for appeal if sentence exceeded statutory maximum); *United States* v. *Benitez-Zapata*, 131 F.3d 1444, 1446-1447 (11th Cir. 1997) (sentencing court's statement that "it is your right to appeal from the judgment and sentence within ten days" was consistent with waiver

because plea agreement permitted appeal under several exceptions).[1]

3. Contrary to petitioner's contention (Pet. 8-13), the court of appeals' opinion does not conflict with the decisions of other courts of appeals.

In *United States* v. *Buchanan*, 59 F.3d 914, 917-918 (9th Cir.), cert. denied, 516 U.S. 970 (1995), on which petitioner principally relies (Pet. 8), the sentencing court twice *incorrectly* told the defendant that he had a right to appeal his sentence, and the defendant acknowledged to the court that he understood that he had such a right. The court of appeals held that the exchange "evince[d] a misunderstanding" by the defendant of the substance of his waiver and that the court's oral pronouncement controlled over the contrary written provision in the plea agreement. 59 F.3d 917-918. Here, in contrast, there was no conflict between the court's statements and petitioner's waiver. The sentencing court *correctly* told petitioner that he had waived his appellate rights. See Pet. App. 5a.[2] The Ninth Circuit's decision in *Buchanan* thus does not conflict with the Fourth Circuit's judgment here. In-

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[1] Petitioner's reliance (Pet. 19-20 & n.9) on *Peguero* v. *United States*, 119 S. Ct. 961 (1999), is misplaced. In *Peguero*, this Court held that a defendant who is aware of his right to appeal may not bring a collateral attack against his sentence because the sentencing judge failed to advise him of his right to appeal as required by Federal Rule of Criminal Procedure 32. 119 S. Ct. at 963. The Court's decision does not suggest that, when a district court advises the defendant of his appellate rights, that statement overrides a waiver in a plea agreement.

[2] Moreover, the district court in *Buchanan* had neither discussed with the defendant nor otherwise mentioned the waiver of appellate rights at his plea hearing. 59 F.3d at 917 n.2. Here, the court had specifically discussed the waiver of appellate rights at petitioner's plea hearing. Pet. App. 4a.

deed, the Ninth Circuit has made clear that *Buchanan* does not apply when the judge's comments on appellate rights at sentencing also include a reminder that the plea agreement waives some or all of those rights. See *United States* v. *Aguilar-Muniz*, 156 F.3d 974, 977 (9th Cir. 1998) (distinguishing *Buchanan* when defendant was informed of his appellate rights *and* of his waiver of those rights); *United States* v. *Martinez*, 143 F.3d 1266, 1272 (9th Cir.) (when court informs defendant that his right to appeal is in doubt, oral advice from court as to how to initiate appeal does not override waiver in plea agreement), cert. denied, 119 S. Ct. 254 (1998).[3]

Also contrary to petitioner's assertion (Pet. 9), there is no conflict between the decision of the court of appeals in this case and the Fifth Circuit's decision in *Baty*, *supra*. The defendant in *Baty* expressed confusion at her *plea hearing* about the scope of the waiver contained in her plea agreement, and the judge did not adequately explain the provision. 980 F.2d at 978-979. The court of appeals thus held that, under the particular circumstances of that case, the defendant's waiver was not informed and voluntary in the first place. *Ibid.* The court of appeals did not find that the judge's statements at *sentencing* invalidated the defendant's

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[3] The other Ninth Circuit decisions cited by petitioner (Pet. 8 n. 4) are also consistent with the decision in this case. In *United States* v. *Schuman*, 127 F.3d 815, 817 (9th Cir. 1997) (per curiam), the court of appeals held that the district court's statements at sentencing did not affect the defendant's waiver of his appellate rights in his plea agreement. And, in *United States* v. *Zink*, 107 F.3d 716, 717-718 (9th Cir. 1997), the court of appeals held that the defendant did not knowingly and voluntarily waive his right to appeal because the plea agreement language was ambiguous and was not adequately clarified by the district court during the Rule 11 plea colloquy.

earlier, valid waiver of the right to appeal. Notably, *Baty* cited with approval (*id.* at 978) the Fifth Circuit's earlier decision in *Melancon*, 972 F.2d at 568, which squarely held that a sentencing court's misstatements regarding a defendant's right to appeal a sentence did not invalidate his earlier knowing and voluntary waiver of appellate rights.

Likewise, petitioner errs in arguing (Pet. 10) that *United States* v. *Bushert*, 997 F.2d 1343 (11th Cir. 1993), cert. denied, 513 U.S. 1051 (1994), conflicts with the decision of the court of appeals in this case. In *Bushert*, the district court told the defendant during the Rule 11 plea hearing that "under some circumstances you or the government may have the right to appeal any sentence that the Court imposes." *Id.* at 1352. The court of appeals found that language confusing and insufficient to convey to the defendant that he was giving up his right to appeal under most circumstances, as provided in the plea agreement. *Id.* at 1352-1353. Here, however, the court of appeals found that the statement by the district court at the Rule 11 hearing was clear and that petitioner's confirmation of his waiver at that hearing was knowing and voluntary. Pet. App. 4a. See also *Benitez-Zapata*, 131 F.3d at 1446 (explaining that *Bushert* concerned the effect of a district court's statements at the plea hearing rather than at the sentencing hearing).

Petitioner fares no better with his claims of conflict "in principle." Pet. 10-12. In *United States* v. *Goodman*, 165 F.3d 169, 172, 174 (1999), the Second Circuit invalidated a defendant's appellate waiver because, among other reasons, the district court's statements at the *Rule 11 hearing* suggested that the defendant retained certain rights to appeal her sentence, contrary to the language of the plea agreement. And, in *United States*

v. *Martinez-Rios*, 143 F.3d 662, 668 (2d Cir. 1998), the district court conducted no colloquy at the Rule 11 hearing concerning the defendants' appellate waiver and made misstatements about their appellate rights at the subsequent sentencing hearing. Thus, the court of appeals found inadequate indication that the defendants understood and knowingly agreed to waive their appellate rights. *Id.* at 668-669. Those opinions, grounded in the inadequacy of the Rule 11 hearings, do not conflict with the decision here, in which the Fourth Circuit found that the Rule 11 colloquy was clear and explicit. Pet. App. 4a.

Finally, in *Everard* v. *United States*, 102 F.3d 763 (6th Cir. 1996), cert. denied, 519 U.S. 1139 (1997), the defendant waived his right to appeal a sentence, and the district court, at sentencing, properly withheld the standard right-to-appeal instruction under Federal Rule of Criminal Procedure 32. The court of appeals ruled that the district court did not err in failing to inform the defendant of an appeal right that he did not possess, 102 F.3d at 765-766, and its ruling has no bearing on the proper outcome in this case.

4. Petitioner urges (Pet. 21-25) that sentencing appeal waivers are invalid as contrary to public policy, primarily because they may produce unwarranted sentencing disparity. Petitioner's contention (Pet. 21-22) that, absent mandatory access to appellate review, district courts will "engage in the unfettered discretion that sparked the call for sentencing reform in the first place" rests on the flawed premise that district courts will routinely and lawlessly disregard the Sentencing Guidelines. Contrary to that premise, this Court should presume that district courts, like other public officials, will faithfully discharge their duties. See *Mezzanatto*, 513 U.S. at 210 (citing *Newton* v. *Rumery*, 480 U.S. 386,

397 (1987) (plurality opinion), and *United States* v. *Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926)).

The benefits of allowing defendants and the government to bargain over the scope of appellate rights in a plea agreement outweigh the cost of the occasional inadvertent error that may go uncorrected. This Court has recognized that plea bargaining is a valid—indeed vital—component of the criminal justice system. *Blackledge* v. *Allison*, 431 U.S. 63, 71 (1977). The Court has also recognized that, in plea bargaining, a defendant often agrees to waive important constitutional and statutory rights. See *Mezzanatto*, 513 U.S. at 200-202; *Tollett* v. *Henderson*, 411 U.S. at 267. "[I]f the prosecutor is interested in 'buying' the reliability assurance that accompanies a waiver agreement, then precluding waiver can only stifle the market for plea bargains. A defendant can 'maximize' what he has to 'sell' only if he is permitted to offer what the prosecutor is most interested in buying." *Mezzanatto*, 513 U.S. at 208 (permitting defendant to waive protection of Federal Rules of Evidence 410 and Federal Rules of Criminal Procedure 11(e)(6) as part of plea agreement).

Petitioner cites no decision holding sentencing appeal waivers invalid on policy grounds. Rather, the courts of appeals have recognized that the interests of both defendants and the public are well served by permitting waivers of appellate rights. See, *e.g.*, *Michelsen*, 141 F.3d at 873 ("[D]efendants will be better served if they are * * * empowered with a legitimate opportunity to choose between exercising such rights [to appeal] and exchanging them for something they value more highly."); *United States* v. *Rosa*, 123 F.3d at 97 ("[P]lea agreements can have extremely valuable benefits to both sides. * * * [T]he waiver provision is a very important part of the agreement."); *United*

States v. *Wenger*, 58 F.3d 280, 282 (9th Cir. 1995) ("[I]f defendants could retract their [appellate] waivers * * * then they could not obtain concessions by promising not to appeal."); *Navarro-Botello*, 912 F.2d at 321-322 & n.3 (public policy "strongly supports" plea agreements containing waivers of appellate rights because they conserve prosecutorial resources, give defendants leverage in negotiations with prosecutors, and promote the finality of convictions); *Wiggins*, 905 F.2d at 54 (refusal to give effect to appellate waivers would undermine the "chief virtues of the plea system—speed, economy, and finality"). See also p. 11, *supra* (discussing limited grounds on which review remains available).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
Solicitor General
JAMES K. ROBINSON
Assistant Attorney General
DEMETRA LAMBROS
Attorney

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